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FEDERAL COMMUNICATIONS COMMISSION
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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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Office of the Secretary

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In the Matter of

Amendment of the Commission's Rules
To Permit FM Channel and Class
Modifications by Application

MM Docket 92-159

REPLY COMMENTS

The instant Petition for Rule Making (PRM) is an excellent opportunity for the Commission to enact procedures specifically to design to eliminate "abuse of process." Comments filed by others during the initial comment period touch on the abuse petitioners must face in the rule making process. The requested allocation of new channels to communities that are only "dots" on a map are presently frustrating many needed upgrades. They are usually proposed at the Allocation Branch by parties intent on blocking upgrades. They can be referred to as "Block Merchants."

As an independent consultant, I have viewed first-hand many attempts to block legitimate upgrades. This usually happens because a competitor and/or a personality conflict causes a party to file some form of pleading that thwarts the upgrade. The most frequently used process is the requesting of an allocation which produces a first local service to a small community.

The upgrade by application process could eliminate the saturation of the FM band with unused and unwanted allocations. In addition, a reasonable cutoff protection for this type of upgrade would also eliminate the abuse of PETITIONS FOR RECONSIDERATION. When parties attempt to use reconsideration to further prohibit new or improved competition, including actions that could be construed as a personal vendetta, it is obvious to anyone associated with the Commission's allocation procedure that this is a blatant abuse of process. If the Commission adopts certain criteria in the instant PRM, many of these abuses can be eliminated. While the present proposal is a step in the right direction, additional consideration of other pertinent points will allow the upgrade process to be greatly streamlined.

**I. ALLOWING UPGRADES BY THE APPLICATION PROCESS GREATLY
REDUCES THE TIME DELAY BETWEEN THE INITIAL
FILING AND THE GRANTING OF THE CP**

Under the current procedure, permittees and licensees must file a petition for rule making, which because of the current load of the Allocations Branch, a period of one to two years exist before the PRM is released for comments. If the PRM is uncontested, a period of six months usually elapses before a Report and Order is given. If there is a conflict in the PRM, this time period can presently stretch into several years. An upgrade by application, provided no legal, engineering, or FAA complications occur, can be

easily completed within six months. This places the applicant in a more business-like atmosphere and allows for a more expedient maximum utilization of the spectrum, especially when the application is afforded a reasonable "cut-off" protection against frivolous petitions for rule making specifically designed as block mechanisms.

II. THE COMMISSION'S FM DOES NOT GO FAR ENOUGH IN CONSIDERATION OF PRESENT LICENSEES AND PERMITTEES

It is the industry's consensus of opinion that the FM spectrum is approaching the saturation point with the proliferation of allocations. However, it is not generally discussed that the possible approaching grid lock is being brought about by the allocation of channels to small communities. These allocations are made as various parties attempt to block other parties' upgrades. Therefore, the Commission must consider new regulations that give present licensees and permittees preference over the allocation of new channels. For a five year specified period the Commission should be mainly concerned with existing broadcasters being able improve their facilities. Presently broadcasters run the risk of having to spend countless thousands of dollars and use an unnecessary number of years (not to mention the Commission's resources) fighting a blatant attempt to block.

New technology and the vast number of new broadcast outlets provide the public numerous methods for the

expression of diverse views and opinions, without the continued allocation of additional channels. The Commission's new focus should be the development of criteria that assist in the development and improvement of existing service. The upgrading by application process is one method to expeditiously accomplish this task.

III. APPLICANTS THAT CAN UPGRADE ONLY WHEN OTHER LICENSEES/PERMITTEES ARE NOT INVOLVED IS TOO RESTRICTIVE.

In the Notice of Proposed Rule Making the Commission stated that it was considering limiting "one step" upgrades to co and adjacent channels, and only when they did not include third (or more) parties. In order to avoid the "block merchants" and frivolous petitions for reconsideration continuing to deplete the resources of the Commission, it should allow all upgrades that involve other parties as long as those parties are participants in the process. In other words, as long as movement or involvement by other parties does not require the issuance of a Show Cause Order as to why its license should not be modified.

There are many scenarios where multiple applicants could all benefit from channel swaps, antenna relocations and possible down grades. In these scenarios some applicants would benefit from upgrades, others from antenna relocations and still others from down grades. However, they are afraid to peruse these developments since the

"block merchants" and/or competitors, through abuse of the system, will create such time delays that the cost are prohibitive.

If mutually agreed channel changes, upgrades, antenna relocations, etc. are jointly submitted years of depriving the public improved service can be avoided. As stated previously, the Commission's possible concern for such scenarios which avoid the opportunity for counterproposals and conflicting PRM's (designed primarily to block) is of minor importance since there are few areas in the US with less than two primary aural services.

Additionally, some comments have been suggested that non-adjacent channel upgrades be allowed. If the Commission truly wants to assist the public in achieving the maximum in service and at the same time preserve its resources, it must include provisions that allow for existing broadcasters to have every method possible to improve its facilities. This would of necessity include non-adjacent upgrades. Non-adjacent upgrades could be possible often if the cooperation of other licensees in various locations were sought. Basically, if non-adjacent channel upgrades were combined with the mutually agreed scenario previously mentioned, many existing broadcasters would be able to improve service. However, under the present requirements that they follow the rule making process they are hesitant to attempt it since it would involve numerous opportunities for the "block

merchants" and/or competitors to frustrate and delay their efforts.

Changes in city of license by application should also be included in the instant PRM. It should be combined with the above procedures.

IV. ELIMINATING SECTION 215 SCENARIOS FROM THE ONE STEP PROCESS IS COUNTERPRODUCTIVE.

In its Notice the Commission indicated that it sought comments on the upgrades by applications where an applicant must first demonstrate that a fully spaced site existed before filing under Section 215. If this were the creation of a new allocation this procedure should be followed. However, there are numerous rural applications where an upgrade to a needed higher class misses the required distance separations by a few meters. To eliminate all of these licensees from upgrading, when they can easily meet the standards of Section 215 is to deprive many small fringe area communities of additional service that could be received from neighboring community upgrades.

The main question to be answered here is does Section 215 adequately function as it was proposed. If it does (and it does) it should be included in the one step upgrade scenario. If the Commission adopts the criteria that all upgrades possible by Section 215 are to be disallowed, it will defiantly eliminate local coverage to persons living in

remote areas of the south and west. Signals from large markets are often available to these areas, but stations inside their own county are unable to provide local service due to inadequate power levels. These areas are not financially qualified to provide the necessary revenue to support local stations. Therefore, all news, entertainment, etc. has to come from distant markets. Section 215 must not be used to create new allocations, however, the Commission should allow existing broadcasters to improve their facilities when using Section 215 to upgrade by application as their only method.

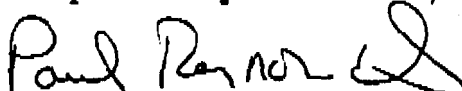
The use of Section 215 to facilitate upgrades by application could be used to break the "grid lock" that exist in many existing PRM's that are at an impasse by only a few meters (or at most a few kilometers). The upgrade by application under Section 215 would also make it possible to correct pending rule making problems where existing licensees have been greatly injured by Commission error. A prime example of this is the long pending upgrade petition of WHOD(FM), Jackson, Alabama. The licensee first filed for an upgrade to a class C3. This was granted and timely constructed. While waiting for the class C3 to be granted, a petition was filed to upgrade to a class C2. After the class C3 was constructed and a form 302 filed, the Commission staff obviously inadvertently removed the class C2 petition coordinates when they removed the no longer

needed class C3 allocation coordinates. Two other CP's were subsequently issued that conflict with the WHOD class C2 upgrade since the petition coordinates did not appear in the Commission's data base. The licensee of WHOD has spent thousands of dollars needlessly due to a Commission error. The use of Section 215 and an upgrade by application would eliminate this problem.\1

CONCLUSION

The rule making process is presently being greatly abused. The instant PRM provides the Commission a great opportunity to establish criteria that makes the upgrading of existing allotments, CPs and licensed stations more streamlined. However, many of the upgrade scenarios will be allowed to "die on the vine" if the PRM is adopted without expanding the criteria to include the provisions discussed in these reply comments.

Respectfully Submitted,



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\1 If must be noted that a conflicting PRM was filed before the WHOD Comment period would have been issued. However, using the Commission's allotment procedures, WHOD would have prevailed